Editor's note: Reconsideration denied by order dated Spet. 16, 1980; -- appealed - dismissed, Civ.No. 81-1540 (D.D.C. June 21, 1982), 542 F.Supp. 1196; aff'd, No. 82-1979 (D.C. Cir. Nov. 29, 1983), 722 F.2d 779), cert denied, 104 S.Ct. 2399; 477 US 1210 (May 21, 1984).

NAARTEX CONSULTING CORP.

IBLA 80-65 Decided June 9, 1980

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, dismissing protest of the issuance of oil and gas lease W 50394.

Appeal dismissed.

1. Oil and Gas Leases: Generally -- Oil and Gas Leases: Cancellation

   Under 30 U.S.C. § 188(b) (1976), an oil and gas lease issued after Aug. 21, 1935, under the provisions of 30 U.S.C. § 226 (1976), is subject to cancellation by the Secretary for lease violation unless or until the land covered by any such lease is known to contain valuable deposits of oil or gas. A lease known to contain such deposits is subject to cancellation in accordance with 30 U.S.C. § 184(h)(1) (1976), which requires a proceeding in Federal district court instituted by the Attorney General.

2. Oil and Gas Leases: Cancellation

   By the terms of 30 U.S.C. § 184(h)(2) (1976), the Department is prevented from cancelling a lease held by a qualified bona fide purchaser, even though the interest of its assignor or other predecessor in title (including the original lessee of the United States) may have been subject to cancellation for a violation of the Mineral Leasing Act. In the absence of any evidence that the facts surrounding certain mesne assignments were sufficient to put an ordinary prudent person on inquiry, an

inquiry which, if followed with reasonable diligence, would lead to the discovery of defects in the title to the lease or equitable rights of any other persons affecting the property, the Department is prevented from cancelling a lease based upon violations by a lease holder's predecessor-in-interest.

3. Oil and Gas Leases: Cancellation -- Rules of Practice: Protest

Where a protestant challenges the bona fides of an oil and gas leaseholder, the burden is upon appellant, not the BLM, to establish by facts the substance of its charge.

4. Oil and Gas Leases: Cancellation

If a lease is cancelled or forfeited to the Government pursuant to 30 U.S.C. § 184(h) (1976), such lease shall be sold by the Secretary to the highest responsible bidder by competitive bidding.

APPEARANCES: Melvin E. Leslie, Esq., Salt Lake City, Utah, for appellant Randall M. Case, Esq., Denver, Colorado, for General American Oil Co. of Texas; Douglas B. Glass, Esq., Houston, Texas, for Michigan Wisconsin Pip Line Co.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

The simultaneous drawing entry card (DEC) of Norbert F. Albrecht was drawn with first priority for Parcel No. 484 offered by the Wyoming State Office, Bureau of Land Management (BLM), in its March 1975 list of lands available for oil and gas leasing. The DEC was assigned Serial No. W 503 and matured into oil and gas lease W 50394 issued effective June 1, 1975, for the SW 1/4 sec. 2; SE 1/4 sec. 4; lots 1, 2, S 1/2 NE 1/4, SE 1/4 sec. 5; N 1/2 S 1/2 sec. 11, T. 44 N., R. 75 W., sixth principal meridian Campbell County, Wyoming, containing 779.19 acres. Record title to the lease was assigned, effective July 1, 1975, to J. S. Harrell, with Albrec retaining a 5 percent overriding royalty interest. Subsequently, record title to the lease became vested in Michigan Wisconsin Pipe Line Co. and General American Oil Co. of Texas, each owning an undivided 50 percent interest. Thereafter, operating rights in a portion of the lease were vested in Davis Oil Co., Southland Royalty Co., and Reading & Bates Oil a Gas Co. As the result of drilling activity under Communitization Agreeme NRM 1180 in SW 1/4 sec. 11, T. 44 N., R. 75 W., production of oil

was achieved and lease W 50394 converted to producing status, subject to minimum royalty payment in lieu of annual rental. As a result of other completed wells, all land in lease W 50394 has been determined to be on t known geologic structure (KGS) of Hartzog Draw Field, with the definition being issued from June 15, 1977, to February 9, 1978.

On January 25, 1979, Geosearch, Inc., by Alvin Abrams, President, filed a protest against issuance of lease W 50394 to Norbert Albrecht. Geosearch was allegedly acting on behalf of K. J. Feil, a member of an amorphous class of persons who had filed DEC's for the said Parcel No. 48 but were unsuccessful in the drawing. The protest charged that Albrecht had not been qualified to receive lease W 50394 because his DEC had been filed by Fred L. Engle, d.b.a. Resource Service Co., under a service agreement violative of the Department's regulations, 43 CFR 3102.7 and 3112.5-2. The protest requested cancellation of any interests in lease W 50394 found to be in the hands of persons who were not bona fide purchase thereof, and reissuance of those lease interests to Geosearch, Inc., and the class of persons represented by the protest.

The BLM State Office dismissed the protest by decision of February 6, 1979, stating:

> Regulation 43 CFR 3112.2-1(a)(4) states, "Unsuccessful drawees will be notified by the return of their respective entry cards." At the time this parcel was won by Mr. Albrecht, in 1975, the #2 and #3 cards were returned to the unsuccessful applicants, in accordance with the above cited regulation. Since none of the unsuccessful applicants appealed the return of their cards within 30 days after they were received, we issued the lease to the #1 drawee, Mr. Albrecht, effective June 1, 1975.
>
> Mr. Albrecht has assigned 100% of his interest in this lease to Mr. J. S. Harrell, effective July 1, 1975. There have been two other record title assignments approved since that time and the lease is now in the names of Michigan-Wisconsin Pipe Line Company and General American Oil Company of Texas, an undivided 50% each. Regulation 43 CFR 3102.1-2(a) sets out the provisions of the statutes to protect bona fide purchasers.
>
> On July 19, 1977, a well was completed on the SW 1/4 Sec. 11 in this lease and the lease is now in a producing status. Regulation 43 CFR 3108.3 states, "Leases known to contain valuable deposits of oil or gas may be cancelled only by judicial proceedings in the manner provided in sections 27 and 31 of the act." (Emphasis added).

> This office does not have the authority to determine the status of purchasers. "The burden is on the protestant to show justification for the disqualification of the successful drawee in a simultaneous filing." 39 IBLA 49, Geosearch, Inc. January 16, 1979.

The subsequent appeal by Geosearch to this Board, docketed under IBLA 79-270, was summarily dismissed May 6, 1979, for failure to file a statement of reasons in support of the appeal. 43 CFR 4.402.

Thereafter on September 19, 1979, Naartex Consulting Corp., by Alvin Abrams, President, filed an identical protest against the issuance of lea W 50394, allegedly acting on behalf of Russell H. Huff, a member of the amorphous class of persons who had filed DEC's unsuccessfully for the sai Parcel No. 484 in March 1975.

By decision of September 28, 1979, the BLM State Office dismissed thi protest, stating as follows:

> As was recited to you in our letter of February 6, 1979: Regulation 43 CFR 3112.2-1(a)(4) states, "Unsuccessful drawees will be notified by the return of their respective entry cards." At the time this parcel was won by Mr. Albrecht, in 1975, all other unsuccessful drawees' cards were returned. None of those applicants ever appealed, therefore they retain no interest in this lease. At the time this parcel issued, the #2 and #3 cards were returned to the unsuccessful applicants. Since neither of the unsuccessful applicants appealed the return of their cards within thirty days after they had received them, their offers no longer remain viable, and they then lost any possible interest in this lease. See Geosearch, Inc., 41 IBLA 291, 293 (1979), Geosearch, Inc., 40 IBLA 397 (1979), Geosearch, Inc., 39 IBLA 49, 51 n. 1 (1979); Beard Oil Co., 77 I.D. 166 (1970).
>
> This lease issued to the #1 drawee, Mr. Albrecht, effective June 1, 1975. He assigned 100% of his record title interest to Mr. J. S. Harrell, effective July 1, 1975. There have been two other record title assignments approved since that time, so that the lease is now held 50% each by Michigan-Wisconsin Pipe Line Company and General American Oil Company of Texas. Bona fide purchasers interests are protected under the Mineral Lands Leasing Act[,] * * * 30 U.S.C. 184(h)(2) (1976); 43 CFR 3102.1-2. No prima facie evidence has been presented to show that the assignees are not bona fide purchasers. See 43 CFR 3102.1-2(c); Geosearch, Inc., 41 IBLA 291, 294.

> On July 19, 1977, a well was completed on the SW 1/4, Section 11 in this lease, putting it in the producing status in which it remains. Under the Mineral Lands Leasing Act[,] * * * 30 U.S.C. 184 (h)(1), 188 (a) (1976)[, and] 43 CFR 3108.3, producing leases may only be cancelled in suits brought by the United States Attorney General in the appropriate United States District Court. Even if prima facie evidence that the assignees are not bona fide purchasers had been presented, and a suit for cancellation had been completed as alluded to above, the interests in this lease could only be set for sale by competitive bid under the Mineral Lands Leasing Act[,] * * * 30 U.S.C. 184(h)(2) (1976).

Naartex has appealed to this Board and set forth the following arguments:

1. Lease W 50394 was issued to Albrecht in violation of the applicable regulations, 43 CFR 3102.7 and 3112.5-2;

2. None of the assignees of various interests in lease W 50394 can qualify as bona fide purchasers;

3. The BLM State Office erred in not requiring the various assignees of the lease to make an immediate showing of bona fide status upon filing of the Naartex protest;

4. The purported return of the second and third drawn DEC's cannot deprive Naartex or any member of the class it represents of any rights th may have to lease W 50394;

5. A hearing before an Administrative Law Judge should be invoked to ascertain the relationships between Engle, Harrell, Michigan Wisconsin Pi Line Co., and General American Oil Co. of Texas.

[1] General American responded that the matter whether lease W 5039 may be cancelled is not properly before the Board, as the lease includes lands known to contain valuable deposits of oil or gas, and so may not be cancelled administratively by the Department of the Interior, but only after judicial proceedings. 30 U.S.C. § 188(b) (1976). Furthermore, General American asserts it has the status of a bona fide purchaser and s is entitled to the protection afforded by 30 U.S.C. § 184 (1976). We agree. The Mineral Lands Leasing Act provides at 30 U.S.C. § 188(b) (197 that an oil and gas lease issued after August 21, 1935, under the provisions of 30 U.S.C. § 226 (1976), shall be subject to cancellation by the Secretary for lease violation unless or until the land covered by any such lease is known to contain valuable deposits of oil or gas. A lease known to contain such deposits would be subject to 30 U.S.C. § 184(h)(1) (1976), which states in part:

> If any interest in any lease is owned * * * in violation of any of the provisions of this chapter, the lease may be canceled, or the interest so owned may be forfeited, or the person so owning or controlling the interest may be compelled to dispose of the interest, in any appropriate proceeding instituted by the Attorney General. Such a proceeding shall be instituted in the United States district court for the district in which the leased property or some part thereof is located or in which the defendant may be found.

Accordingly, the Board does not have jurisdiction to cancel a producing lease. The appeal may be dismissed for this reason.

Michigan Wisconsin Pipe Line also responded, arguing that the appeal should be dismissed because Naartex has not complied with certain procedural regulations of the Board as to the time for filing an appeal. Naartex should be barred, Michigan Wisconsin argues, from relitigating th protest by reason of the doctrine of administrative finality due to the relationship of its officers to Geosearch, Inc., whose appeal with respec to the identical lease has heretofore been dismissed. Michigan Wisconsin joins General American in pointing out that lease W 50394 is a producing lease which cannot be cancelled except by an action in Federal court and further argues that the factual basis upon which Naartex predicates its statement of reasons is in error. Holders of DEC's, it maintains, other than those drawn second or third, have no right to contest issuance of th Federal oil and gas lease under the simultaneous drawing procedures, and even a failure to return the DEC's of unsuccesful drawees should not serv to perpetuate appeal rights in such persons. Michigan Wisconsin conclude by stating that it is a bona fide purchaser entitled to the protection of 30 U.S.C. § 184(h)(2) (1976).

In the rules of procedure for the Department, 43 CFR 4.450-2 states that where the elements of a contest are not present, any objection raise by any person to any action <u>proposed</u> to be taken before the Bureau of Lan Management will be deemed to be a protest and such action will be taken a is deemed to be appropriate in the circumstances. Appellant purports to <u>protest</u> an action taken by BLM some 4 years before the protest was filed. Appellant does not allege it was injured at the time by the issuance of lease W 50394 to Albrecht, nor even that it had filed a DEC for the parce involved. The protest is based on the nebulous argument that it is in behalf of an undisclosed class of persons who allegedly filed DEC's for t parcel. The plea is that the existing lease be cancelled and reissued to Naartex and the unnamed persons allegedly injured by issuance of the leas It is difficult, if not impossible, to perceive how Naartex, more than 4 years <u>after</u> the action was taken, can be considered a protestant under th regulations of this Department. As to the class of unnamed persons for whom Naartex altruistically makes the protest,

none is in a position to appeal the rejection of his or her lease offer after passage of 4 years. The Departmental regulations require notice of appeal from rejection of an offer to lease to be filed within 30 days aft the rejection of the offer. 43 CFR 4.411. Under standard Departmental practice, the DEC's not drawn first, second, or third, were returned to t offerors immediately after the drawing, and indeed the DEC plainly states on its face, "The return of this card indicates that you were not successful in the drawing and your offer is rejected." As none of the unsuccessful drawees appealed relative to Parcel 484 within 30 days after return of their DEC's, whatever rights any of the drawees might have had appeal have long since vanished. As a stranger in title to any interest the lease, appellant is bound by the acts or omissions of its predecessor Amoco Production Co., 16 IBLA 215 (1974).

The argument of respondent Michigan Wisconsin that the appeal should be dismissed summarily is well taken. We will, however, discuss the more substantive facets of the case.

[2] Appellant argues that Albrecht was not the sole party in interes in his offer because of a service agreement between himself and Engle, which allegedly created an interest in Engle, in violation of 43 CFR 3102.7, in each DEC lease offer he filed for his customers.

In Frederick W. Lowey, 40 IBLA 381 (1979), the Board said in the syllabus:

> When an individual files an oil and gas lease offer through a leasing service under a contractual agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service a commission according to a set schedule on any sale plus a percentage of any royalties, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Accord, Sidney H. Schreter, 32 IBLA 148 (1977); Lola I. Doe, 31 IBLA 394 (1977). However, in Geosearch, Inc., 40 IBLA 401 (1979), and in Geosearc Inc., 39 IBLA 49 (1979), the Board expressed these views:

> Where an oil and gas leasing service selects lands, files offers, and advances funds on behalf of its clients for

> leases which the service is willing to sell on behalf of any successful client, strictly at the client's option, in return for a percentage commission on the sale, the service has no enforceable right to any portion of the lease, if issued. In such circumstances, the service does not have an "interest" in the lease, so that the client/offeror is not precluded from stating that he is the sole party in interest to the offer, and the filing of offers for the same parcel by other clients of the service is not disqualifying.

The appellant herein has not shown that the service agreement alleged to exist between Engle and Albrecht is of the first type above discussed. In any event, the Wyoming State Office was satisfied by the showing of Albrecht and issued lease W 50394 to him. Thereafter the lease was assigned to Harrell and later to Michigan Wisconsin Pipe Line. Under 30 U.S.C. § 184(h)(2) (1976) and 43 CFR 3102.1-2(a), the Department is prevented from cancelling a lease held by a qualified bona fide purchaser even though the interest of its assignor or other predecessor in title (including the original lessee of the United States) may have been subject to cancellation for a violation of the Mineral Leasing Act. Southwestern Petroleum Corp. v. Udall, 361 F.2d 650 (10th Cir. 1966); Geosearch, Inc., 39 IBLA 49 (1979); Robert G. Race, 37 IBLA 162 (1978); Duncan Miller, A-30600 (Dec. 1, 1966).

In the absence of any facts that suggest bad faith on the part of the present record title holders of lease W 50394, this provision applies and the lease may not be cancelled, despite the possibility of any improprieties in its issuance. Geosearch, Inc., supra; Robert G. Race, supra; Duncan Miller, supra. The present record title holders of lease W 50394 have asserted they can establish that they were bona fide purchasers, within the meaning of the Act, in acquisition of that title. Appellant has not provided any evidence that the facts surrounding the mesne assignments from Albrecht to Michigan Wisconsin Pipe Line were sufficient to put an ordinary prudent person on inquiry, an inquiry which if followed with reasonable diligence, would lead to the discovery of defects in the title to the lease or equitable rights of any other person affecting the property. Cf. Southwestern Petroleum Corp., supra at 657.

[3] Appellant contends BLM erred in not requiring the various assignees of lease W 50394 to make an immediate showing of their bona fide upon the filing of the protest by appellant in 1979. As pointed out above the burden is on the appellant to present facts relating to the bona fide purchasers, not innuendoes. Geosearch, Inc., 39 IBLA at 54. Appellant's allegations appear to be entirely conjectural. He has failed to meet his burden of showing by competent evidence of irregularities that the lease was improperly issued, or that the present record title holders of the lease are not qualified under the Act.

Appellant argues that the purported return of the second and third drawn DEC's cannot deprive appellant or any member of the class

it represents of any rights that they may have to lease W 50394. None of the applicants whose DEC's were filed for Parcel No. 484 in March 1975 ha any appeal rights beyond 30 days after receiving the returned DEC. 43 CF 4.411. No appeals were filed by any such persons, either by an unsuccessf offeror or one who was drawn second or third. Appellant suggests that th DEC's may not have been returned to the applicants so that the actual 30-day appeal period was never defined. In an affidavit dated February 1 1980, Mrs. Glenna Lane, Chief, Oil and Gas Section, Wyoming State Office, avers that prior to September 1976, all unsuccessful DEC's were rejected and returned to the party making the filing immediately upon award of the respective lease. In any event, the record does not disclose any inquiry relative to the DEC's filed for Parcel 484 during the period from May 15, 1975, when the lease was executed on behalf of the United States, and January 25, 1979, when the aborted protest of Geosearch, Inc., was filed against lease W 50394. We cannot accept the argument that the appeal rights of the unsuccessful drawees have been abridged or abrogated by any procedure of the Wyoming State Office in returning the unsuccessful DEC's

[4] Nor can we recognize any rights in appellant from its purported class action protest. There is no basis for any entity which did not participate in the original drawing with a DEC to have any rights to obta any interest in the lease other than from the original lessee or its duly recognized successors in interest. If any reason exists to compel cancellation of a noncompetitive oil and gas lease, issued in violation o the statute, such cancelled interest may be disposed of only by competiti bidding. 30 U.S.C. § 184(h)(2), (1976).

We see no reason, on the basis of the record before us, to grant appellant's request for a fact-finding hearing under 43 CFR 4.415. The request is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, we find no error in the decision appealed from; the appeal is accordingly dismissed.

_____
Douglas E. Henriques
Administrative Judge

We concur:

_____
Edward W. Stuebing
Administrative Judge

_____
Frederick Fishman
Administrative Judge